

Frank J. Rubino
Corporation Counsel for the City of Yonkers
40 South Broadway
City Hall, Room 300
Yonkers, New York 10701
By: Rory McCormick (RM 3994)
Associate Corporation Counsel

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
OMAR GILCREST,

Plaintiff,

-against-

ANSWER

CITY OF YONKERS, CITY OF YONKERS POLICE
DEPARTMENT, POLICE OFFICERS, JOHN DOE
NO. 1, BADGE NO. 708, IN HIS INDIVIDUAL AND
OFFICAL CAPACITY, JOHN DOES NO. 2-6, IN
THEIR INDIVIDUAL AND OFFICAL CAPACITY
AS POLICE OFFICERS OF THE CITY OF YONKERS,
NEW YORK.

Index No. 07 CV 3117 (JSR)

Defendants.

-----X

Defendants, THE CITY OF YONKERS, CITY OF YONKERS POLICE
DEPARTMENT by their attorney, FRANK J. RUBINO, Corporation Counsel of the City
of Yonkers, as and for its Answer to the Complaint respectfully allege as follows:

FIRST: Denies upon information and belief, each and every allegation set forth in
paragraphs designated "1" and "2" of the Complaint except admit that Plaintiff purports to
proceed as stated therein.

SECOND: Denies upon information and belief, each and every allegation set
forth in paragraphs designated "3", "4", "5" and "7" of the Complaint and respectfully
refers all questions of law to the Court.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated “6”, “8”, “9”, “10” and “12” of the Complaint.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated “11” and “13” of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE FIRST CAUSE OF ACTION

FIFTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “unnumbered paragraph” of the Complaint with the same force and effect as though fully set forth herein at length.

SIXTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “14”, “15”, “16”, “18”, “19” and “20” of the Complaint and respectfully refers all questions of law to the Court.

SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “17” of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE SECOND CAUSE OF ACTION

EIGHTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “21” of the Complaint with the same force and effect as though fully set forth herein at length.

NINTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “22”, “24” and “25” of the Complaint and respectfully refers all questions of law to the Court.

TENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “23” of the Complaint.

ANSWERING THE THIRD CAUSE OF ACTION

ELEVENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “26” of the Complaint with the same force and effect as though fully set forth herein at length.

TWELFTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “27”, “28”, “29”, “30”, “31” and “32” of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE FIFTH CAUSE OF ACTION

THIRTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “33” of the Complaint with the same force and effect as though fully set forth herein at length.

FOURTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “34”, “35” and “37” of the Complaint and respectfully refers all questions of law to the Court.

FIFTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “36” of the Complaint and respectfully refers all questions of law to the Court.

SIXTEENTH: Denies upon information and belief, each and every allegation set forth in paragraph designated “38” of the Complaint except admit that Plaintiff purports to proceed as stated therein; and respectfully refers all questions of law to the Court.

ANSWERING THE SIXTH CAUSE OF ACTION

SEVENTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “39” of the Complaint with the same force and effect as though fully set forth herein at length.

EIGHTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “40” and “41” of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE SEVENTH CAUSE OF ACTION

NINETEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “42” of the Complaint with the same force and effect as though fully set forth herein at length.

TWENTIETH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “43” and “44” of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE EIGHTH CAUSE OF ACTION

TWENTY-FIRST: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "45" of the Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-SECOND: Denies upon information and belief, each and every allegation set forth in paragraphs designated "46" and "47" of the Complaint and respectfully refers all questions of law to the Court.

TWENTY-THIRD: Deny all allegations in the "Wherefore" portion of the Complaint, except those conclusions of law which accordingly require no response; and except admit that Plaintiff purports to proceed as stated therein.

AS AND FOR A FIRST DEFENSE:

TWENTY-FOURTH: The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND DEFENSE:

TWENTY-FIFTH: Defendants' actions were in good faith and for good cause including, but not limited to, legitimate, rational, and appropriate governmental interests.

AS AND FOR A THIRD DEFENSE:

TWENTY-SIXTH: Injuries and damages to the Plaintiff were caused in whole or in part or were contributed to by the culpable conduct and want of care on the part of Plaintiff.

AS AND FOR A FOURTH DEFENSE:

TWENTY-SEVENTH: That if any physical force was used to effect

the arrest of the Plaintiff, only such physical force was used to the extent it was reasonably believed to be necessary to effect the arrest of the Plaintiff, whom the arresting officer reasonably believed to have committed an offense.

AS AND FOR A FIFTH DEFENSE:

TWENTY-EIGHTH: That the Plaintiff's arrest and prosecution were not effectuated falsely, maliciously or without probable cause. On the contrary, there was reasonable and just cause for believing the Plaintiff guilty of a criminal act and in arresting and prosecuting the Plaintiff, the Defendant, CITY OF YONKERS, was not actuated by malice nor were any of its agents, servants and/or employees so actuated.

AS AND FOR A SIXTH DEFENSE:

THIRTY-NINTH: At all times relevant to the Complaint, Defendants have been in compliance with all requirements under the laws cited by the Complaint.

AS AND FOR A SEVENTH DEFENSE:

THIRTIETH: Defendant City of Yonkers Police Department is improperly sued in this action when the Police Department is merely a department of the City of Yonkers.

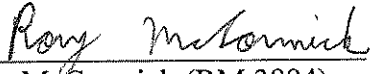
AS AND FOR A EIGHTH DEFENSE:

THIRTY-FIRST: The individual Defendant Police Officers are entitled to the defense of qualified immunity.

WHEREFORE, defendants request judgment dismissing the Complaint together with costs, disbursements, and attorneys' fees and any other relief the Court deems just and proper.

Dated: Yonkers, New York
August 9, 2007

Yours, etc.,
FRANK J. RUBINO
Corporation Counsel
Attorney for Defendant
THE CITY OF YONKERS
City Hall, Room 300
Yonkers, New York 10701
(914) 377-6256

By: 
Rory McCormick (RM 3994)
Associate Corporation Counsel

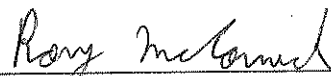
TO: Welton K. Wisham, Esq.
305 Broadway, 9th Floor
New York, New York 10007

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2007 I caused a true and correct copy of the foregoing ANSWER to be served by mail upon:

Welton K. Wisham, Esq.
305 Broadway, 9th Floor
New York, New York 10007

Dated: August 9, 2007
Yonkers, New York


Rory McCormick